

Sunset Public Hearing Questions for
Polysomnography Professional Standards Committee
Created by Section 63-31-103, *Tennessee Code Annotated*
(Sunset Termination June 2022)

Enabling Statute, Purpose, and Rules and Regulations

1. Please provide a brief introduction to the committee including information about its purpose, statutory duties, staff, and administrative attachment.

To assist the Tennessee Board of Medical Examiners (the “Board”), the Polysomnography Professional Standards Committee (the “Committee”) was established by the General Assembly in 2007 to license those individuals actively engaged in the practice of polysomnography as that term is defined in T.C.A. § 63-31-101(9)(A). The Committee is responsible for safeguarding the health, safety, and welfare of Tennesseans by ensuring those who practice polysomnography are qualified.

The Committee, working with the Board of Medical Examiners, interprets the laws, rules, and regulations to determine the appropriate standards of practice to ensure the highest degree of professional conduct. The Committee is authorized to issue licenses to qualified candidates who have completed appropriate education and successfully completed required examinations. The Committee, along with the Board, determines the appropriate standard of care, investigates alleged violations of laws and rules, and disciplines licensees who are found guilty of such violations.

The administrative staff of the Division of Health Related Boards supports the Committee by issuing licenses to those who meet the requirements of the law and rules. Renewal notices are mailed from the Committee’s administrative office sixty (60) days prior to the expiration of the license to the current address on record. For those licensees who have opted in for electronic notification, an email will be sent to the email address on file approximately seventy (70) days prior to the expiration date of the license. Licenses can be renewed online seventy (70) days prior to the expiration. Failure to renew by the expiration date may result in a fine.

The Committee meets three (3) times per year and consist of seven (7) members, all appointed by the Governor. A quorum of four (4) members is required to conduct business. The Committee consists of three (3) registered polysomnographic technologists; one (1) physician who is certified in sleep medicine by a national certifying body recognized by the American Academy of Sleep Medicine; one (1) person who is the director of an accredited, hospital-based sleep center; one (1) respiratory therapist who is also a registered polysomnographic technologist; and one (1) consumer member who is not associated with the healthcare field, either directly or indirectly.

2. Has the committee promulgated rules and regulations? If yes, please cite the reference(s).

Yes, the General Rules and Regulations Governing the Practice of Polysomnography are located in Chapter 0880-14.

Committee Organization

3. Provide a list of current committee members and explain how membership complies with Section 63-31-103, *Tennessee Code Annotated*.

Member	Representation	Term Beginning	Term Ending	Consecutive	Demographics
Jim Donaldson	Respiratory Therapist	06/05/2020	12/31/2023	Yes	Under 60 years, Non-minority, Male, West TN
Scott Vogt	Director of Accredited Sleep-Based Sleep Center	01/19/2018	12/31/2021	Yes	Under 60 years, Non-minority, Male, East TN
Charity Worrick	Respiratory Therapist/Registered Polysomnography Technologist	10/28/2016	12/31/2023	No	Under 60 years, Non-minority, Female, East TN
Theresa Hill	Consumer member	01/26/2017	12/31/2020	Yes	Under 60 years, Non-minority, Female, West TN
Mark Spiceland	Polysomnography Technologist	07/20/2018	12/31/2021	No	Under 60 years, Non-minority, Male, Middle TN
Penny Sprigs-Smith	Polysomnography Technologist	11/27/2018	12/31/2022	No	Under 60 years, Minority, Female, West TN
Stephen Heyman	Physician certified in Sleep Medicine	06/20/2019	12/31/2022	No	Over 60 years, Non-minority, Male, Middle TN

4. Are there any vacancies on the committee? If so, please indicate how long the position has been vacant and explain steps that have been taken to fill any vacancies.

There is one (1) position that expired in December 2020. Each member shall serve on the committee until a successor is appointed. Notice was made to the Governor's Office of the vacancy, and it is currently in the appointment process.

5. How many times did the committee meet in each of the last two fiscal years?

The Committee met two (2) times in Fiscal Year 2019. The Committee met three (3) times in Fiscal Year 2020.

6. How many members were present at each meeting? Please note meetings where the committee did not have a quorum.

Fiscal Year 2019		
Meeting Date	# Board Members	Quorum
02/26/2019	4	Yes
05/07/2019	4	Yes

Fiscal Year 2020		
Meeting Date	# Board Members	Quorum
03/13/2020	6	Yes
05/12/2020	6	Yes
08/25/2020	6	Yes

Financial Information

7. What were the committee's revenues and expenditures for the last two fiscal years? Does the committee carry a reserve balance? If so, please provide additional relevant information regarding the reserve balance, including whether the committee is self-sufficient.

For fiscal year 2019, the Committee had revenues of \$48,500.78 and total expenditures of \$36,767.78, with a reserve balance of \$15,399.78.

For fiscal year 2020, the Committee had revenues of \$46,599.04 and total expenditures of \$36,128.10, with a reserve balance of \$21,597.91.

The Committee is self-sufficient.

8. Do committee members receive per diem or travel reimbursements? How much was paid to individual committee members in each of the last two fiscal years?

Committee members are paid one-hundred dollars (\$100.00) per diem. Travel reimbursements are paid according to the Department of Finance and Administration's Comprehensive Travel Regulations. The per diem and travel amounts for each Committee member listed below represents the amounts paid from July 1, 2018, through June 30, 2020.

Member Name	FY19-Per Diem Total	FY219Travel Reimbursement Total	FY20-Per Diem Total	FY20-Travel Reimbursement Total
Charity Worrick	\$300.00	\$360.96	\$200.00	\$351.56
Jim Donaldson	\$200.00	\$966.45	\$200.00	\$1,041.81
Mark Spiceland	\$200.00	\$31.96	\$200.00	\$31.96
Penny Springs-Smith	\$200.00	\$909.83	\$200.00	\$589.33
Daniel Brown	\$100	\$403.05	\$0	\$0
Scott Vogt	\$200.00	\$ 501.96	\$200.00	\$334.64
Stephen Heyman	\$0	\$0	\$0	\$0
Theresa Hill	\$0	\$0	\$0	\$0

9. Does the committee collect fees? If yes, provide relevant information about fees collected. Indicate whether fees were established through rule or through state law.

Fee Category	Fee Amount	Rule or Statute
Application Fee – Polysomnography	\$200	Rule
Licensure Renewal Fee – (biennial)	\$120	Rule
State Regulatory Fee – (Initial)	\$5	Rule
State Regulatory Fee (biennial)	\$10	Rule
Late Fee	\$50	Rule
Replacement License Fee	\$25	Rule

Sunshine Law, Public Meetings, and Conflict of Interest Policies

10. Is the committee subject to Sunshine law requirements (Section 8-44-101 et seq., *Tennessee Code Annotated*) for public notice of meetings, prompt and full recording of minutes, and public access to minutes? If so, what procedures does the committee have for informing the public of meetings and making minutes available to the public?

The Committee is subject to Sunshine law requirements of Tenn. Code Ann. 8-44-101 et seq. A public meeting notice is posted to the Committee's web site by the fourteenth (14th) day of the month proceeding the month of the meeting date, as well as, posting the information on the Public Participation Calendar. The Committee's administrative staff attends all meetings and takes minutes. Those minutes are then prepared for review and ratification by the Committee at its next regularly scheduled meeting. After the minutes are ratified, they are then placed on the Committee's website.

11. Does the committee allow public comment at meetings? Is prior notice required for public comments? If public comment is not allowed, how does the committee obtain feedback from the public and those they regulate?

Committee meetings are conducted in full view of the public pursuant to a sunshine notice which provides information for the location of the meeting – whether the meeting is held in person or via remote/teleconference means - a link to remotely view live-streaming of the meeting and notice of agenda items. The meeting is guided by this published agenda. The Committee will recognize members of the public who request to be heard on a matter properly noticed before the Committee.

Additionally, all health-related boards have instituted a sign-in sheet procedure at the meeting location that permits members of the public to make time limited comments on matters properly noticed and before the Committee for consideration. Discussion of matters not receiving proper notice would violate the sunshine laws of Tennessee. Therefore, should a member of the public have a topic or comment that requires discussion, the most effective practice is to make the request known to the board administrator or director in advance to have the matter placed on the monthly sunshine notice. The Committee also accepts and reviews letters to the Committee as another means of addressing questions/concerns raised by the public and stakeholders. Meetings held virtually invited public comment during each meeting and recognized all listed as attendees.

A video recording of the meeting is placed on the Committee's website within 24-48 hours of the meeting and is also available on the Department of Health's website for approximately one month following the meeting. An audio recording of the meeting is also available upon request.

12. Does the committee have policies to address potential conflict of interest by committee members, employees, or other state employees who work with the committee?

Yes. All Committee members are educated on the Department of Health's Conflict of Interest Policy and reminded during the course of each meeting of the obligation to strictly adhere to the policy. Committee members are required to sign a Conflict of Interest Statement upon appointment or as soon as practical and annually thereafter. It is the responsibility of the board administrator to ensure that the Conflict of Interest Statement is properly and timely signed. Board staff is required to sign a new Conflict of Interest statement annually. The Committee's administrative office keeps signed copies on file in the Central Office of Health Related Boards.

Certification and Oversight Responsibilities

13. How many total certifications has the committee had in each of the last two fiscal years?

In FY19, there were 457 total licensees.

In FY20, there were 483 total licensees.

14. How many new applications for certifications has the committee received in each of the last two fiscal years? If necessary, please differentiate by type or category.

In FY19, there were 17 new applications.

In FY20, there were 23 new applications.

15. How many certification applications did the committee deny during each of the last two fiscal years? What were the reasons for denial?

No applications were denied.

16. What was the total number of complaints received by the committee in each of the last two fiscal years? If available, please provide information on the number of consumer complaints as well as the number of administrative complaints.

In FY20, there were five (5) new complaints opened. There were three (3) administrative complaints, and there were two (2) consumer complaints.

In FY21, there were three (3) complaints opened. All three (3) were administrative.

17. Describe the process by which the committee receives, handles, and tracks complaints. For example, are complaints rated by level of seriousness or other priority-handling method? Is a complaint log maintained? What benchmarks have been established for timely resolution of complaints? Are all complaints resolved timely?

The Committee receives complaints through the Office of Investigations. The Office of Investigations maintains a website with instructions of how to file a complaint. This website allows the public to provide complaints electronically, by phone, mail, or fax. All complaints are entered into a database system upon receipt and are assigned to the Committee's complaint coordinator. Each complaint is reviewed by the Committee's appointed polysomnography consultant and attorney to determine if the allegation constitutes a violation of the Committee's practice act and rules.

If it is determined that the allegation would constitute a violation of the practice act or rules, the consultant and attorney will request that the allegation be investigated by a

trained investigator with the Department of Health. Complaints that involve the potential for immediate jeopardy to the public are prioritized. All complaints have a 90-day benchmark for completion. Complaints are completed within the assigned benchmark when possible however 30-day extensions are granted in instances when additional time is needed to complete a thorough investigation due to issues such as witness availability and receipt of medical records from a third party.

Once investigated, the investigative report and all evidence obtained are provided to the consultant and attorney to jointly review to determine if there is evidence to support the violation alleged by the complainant. If so, the consultant and attorney discuss the appropriate level of discipline that is proportionate to the violation, and the licensee is provided with an opportunity to agree to that discipline. The licensee also has the right to reject the Committee's proposed discipline and request a formal contested case hearing before the Committee.

Not all complaints are assigned for investigation. In instances where the consultant and attorney find that the complaint does not violate the practice act and investigation is not necessary, the file is closed, and the complainant is notified in writing. Complaints that fall outside the jurisdiction of the office of investigations are forwarded as appropriate.

18. Please describe how the committee takes disciplinary action against practitioners who are found to have violated statutes and/or the committee's rules and regulations.

If the consultant and attorney determine that the investigative report and evidence substantiate that a licensee has committed a violation of the practice act and/or rules that rises to the level of public discipline, the case will be transferred to the Office of General Counsel for prosecution.

Formal discipline of a licensee can consist of a reprimand, probation, suspension, voluntary surrender, revocation, and summary suspension. The licensee can also be assessed civil penalties that range from \$50.00-\$1,000.00 per violation; required to complete continuing education hours in addition to those required to maintain licensure; and assessed the costs for the investigation and presentation of the matter.

There are several procedural avenues by which disciplinary matters may come before the Committee:

- A. Consent Orders - Presents the licensee an opportunity to resolve the matter by agreement, making formal proceedings unnecessary. By signing the Consent Order, the licensee waives the right to a contested case hearing and any and all rights to judicial review in the matter and agrees to the presentation and consideration of the Consent Order by the Committee for ratification at the scheduled public meeting. After the Committee approves the public disciplinary action, the Office of General Counsel sends a copy of the order to the Disciplinary Coordinator. The Disciplinary Coordinator changes the

licensure status in the LARS licensure database as appropriate, posts the disciplinary action on the public website for the health related boards, and reports the disciplinary action to the National Practitioner Databank. The Disciplinary Coordinator also monitors the case as appropriate to assure that the Respondent complies with the terms of the order and reports the action on the monthly disciplinary action report. Should the Committee fail to ratify the Consent Order, formal disciplinary proceedings will be initiated, and the licensee is notified of such.

B. Agreed Orders- When a licensee has requested a formal disciplinary hearing in lieu of settling the matter by Consent Order and then requests to settle the matter prior to the formal proceeding taking place, an Agreed Order allows the licensee to waive the right to a contested case hearing and any and all rights to judicial review in the matter. The Agreed Order is presented to the Committee for ratification at the scheduled public meeting. After the Committee approves public disciplinary action, the Office of General Counsel sends a copy of the order to the Disciplinary Coordinator. The Disciplinary Coordinator changes the licensure status in the LARS database as appropriate, posts the disciplinary action on the public website for the Health Related Boards, and reports the disciplinary action to the National Practitioner Databank. The Disciplinary Coordinator also monitors the case as appropriate to assure that the Respondent complies with the terms of the order and reports the action on the monthly disciplinary action report. Should the Committee fail to ratify the Agreed Order, formal disciplinary proceedings will be initiated, and the licensee is notified of such.

C. Contested Cases – Formal disciplinary hearing in which the Committee sits as jury. An Administrative Law Judge presides and makes evidentiary rulings and instructs the Committee as to procedure. Committee members may question witnesses. The licensee, known as the “Respondent,” is prosecuted by a litigating attorney from the Office of General Counsel who represents the State, just as a prosecutor in a criminal court represents the State. A licensee always has the right to legal counsel.

19. How many certifications did the committee revoke or suspend during each of the last two fiscal years? What were the reasons for the revocations or suspensions?

There were no suspensions or revocations in FY19 or FY20.

20. Does the committee maintain reciprocal agreements with other states to recognize associated professions who are licensed under the laws of other states such that these individuals may practice in Tennessee?

The Committee does not maintain reciprocal agreements with other states.

Reports, Major Accomplishments, and Proposed Legislative Changes

21. What reports does the committee prepare concerning its activities, operations, and accomplishments? Who receives copies of these reports? Please provide a link to any such reports issued in the last two fiscal years.

The Committee reports licensure, legislative and general updates on the following hyperlink: <https://www.tn.gov/health/health-program-areas/health-professional-boards/polys-board.html> The Committee reports its disciplinary action to the Department of Health for inclusion in the Monthly Disciplinary Action Report. The Committee also reports its disciplinary action to the Office of Investigations, for the purpose of reporting to the National Practitioner Databank, when required by law. The Disciplinary Action Report can be found at the following hyperlink: <https://www.tn.gov/health/health-professionals/health-professionals-boards-disciplinary-actions.html>

22. What were the committee's major accomplishments during the last two fiscal years?

The Committee carries out business in an efficient manner, reviewing matters and issues as they arise, and handling them quickly. The Committee has not adopted any policy statements this fiscal year. The most recent was in May 2018, when the Committee adopted a Position Statement regarding Board Certification Requirements for Licensure as a Tennessee Polysomnographic Technologist. In this position statement, the Committee clarified that an applicant must be certified by the Board of Registered Polysomnographic Technologist, or RPSGT, to be eligible for Licensure as a Tennessee polysomnographic technologist.

23. What, if any, challenges has the committee addressed in the last two fiscal years?

Fiscal year 2019 held no substantial challenges for the Committee, however, fiscal year 2020 has made way for certain challenges. These challenges and their resolutions have included:

A. Hesitancy and concern from board members over conducting board/committee meetings via an in-person format, due to their own personal high-risk status or travel/overnight stay concerns.

a. Executive Orders issued by the Governor, allowing for meetings to be held via remote teleconference means, provided the resolution required for this challenge.

B. Obtaining in-person continuing education hours as required for the maintenance of a license, due to live events being cancelled or converted to an online format.

a. Executive Order #50 and the subsequent Commissioner of Health's Policy regarding the audit of in-person continuing education for calendar year 2020 provided the resolution required for this challenge, which removed the limitation for how many continuing education hours licensees could obtain virtually.

24. Please describe any items related to the committee that require legislative attention and your proposed legislative changes.

Possible legislative action is needed to expand licensure access to A-Step applicants. Otherwise qualified applicants have had to withdraw their applications due to the statutory requirements.

25. Should the committee be continued? To what extent and in what ways would the absence of the committee affect the public welfare of the citizens of Tennessee?

The Department of Health defers to the will of the legislature. According to the American Association of Sleep Technologists, twelve (12) states regulate the practice of polysomnography.

The Polysomnography Professional Standards Committee appeared before the Education, Health and General Welfare Joint Subcommittee of the Government Operations Committee for sunset hearings in 2019. A sunset termination date of June 30, 2020, was established, and a sunset bill was drafted, but the bill did not pass during the 2020 Legislative Session. House Bill 0493 was introduced during the 2021 Legislative Session, extending the Committee to June 30, 2022. The Committee will automatically sunset absent an extension.

26. Please identify the appropriate agency representative or representatives possessing substantial knowledge and understanding of the responses provided to the sunset review questions.

Jennifer Putnam, Assistant Commissioner, Health Licensure and Regulation
Brent Culberson, Assistant Commissioner, Legislative Affairs
Elizabeth Foy, Legislative Liaison
Alicia Grice, Fiscal Director, Health Licensure and Regulation
Angela Lawrence, Board Director
Samuel Moore, Senior Associate General Counsel

27. Please identify the appropriate agency representative or representatives who will respond to the questions at the scheduled sunset hearing.

Jennifer Putnam, Assistant Commissioner, Health Licensure and Regulation
Elizabeth Foy, Legislative Liaison
Alicia Grice, Fiscal Director, Health Licensure and Regulation
Samuel Moore, Senior Associate General Counsel
Penny Sprigs-Smith, Committee Chair

28. Please provide the office address, telephone number, and email address of the agency representative or representatives who will respond to the questions at the scheduled sunset hearing.

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